

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

BASF CATALYSTS LLC,

Plaintiff,

V.

UNITED STATES OF AMERICA, et al.,

Defendants.

Civil Action No. 05-11241-JLT

(Electronic filing)

**JOINT STATUS REPORT AND MOTION FOR
ENLARGEMENT OF TIME TO FILE PLEADINGS**

Plaintiff BASF Catalysts LLC (“BASF” or “Plaintiff”) and Defendants the United States of America, et al. (“United States” or “Defendants”) hereby jointly file a status report and motion for enlargement of time for the filing of pleadings. Specifically, the motion seeks a 30-day enlargement of time for BASF to file an amended complaint (if any), as well as a 30-day enlargement for the United States to file its Answer or other response. Thus, under the motion, BASF’s amended complaint, which is currently due by October 12, 2007, would be due by November 13, 2007, and the United States’ response to the complaint, which is due by October 26, 2007, would be due by November 26, 2007.

STATUS REPORT

Pursuant to the Court's order of July 10, 2007, the parties hereby report on the status of the case, including the status of their settlement efforts:

1. The parties have been and are actively engaged in efforts to settle this case, but a settlement has not yet been achieved. The parties have a settlement conference scheduled for

October 18, 2007, at BASF's offices in Iselin, New Jersey. The parties have devoted an extensive amount of time in preparation for the settlement conference, and intend that significant progress toward a settlement be made at the conference.

2. The parties' efforts toward achieving a settlement have been substantial. For example, in an effort to ascertain the scope and nature of the claims asserted by BASF, experts retained by the United States have reviewed and analyzed thousands of pages of cost-related documents produced by BASF. Additionally, the undersigned counsel for the United States has devoted a significant amount of time analyzing the claims at issue and developing the United States' position. Currently, BASF's alleged past costs at the site exceed \$17 million, BASF's claims involve pollution related to manufacturing activities that occurred at the plant over four decades, and involves environmental response costs incurred and to be incurred over a 20-year period. For its part, BASF has gathered and produced an extensive amount of cost-related and other site-specific documents, provided detailed settlement position statements to the United States, as well as follow-up correspondence.

3. Additionally, on August 27, 2007, the undersigned counsel for both parties, and in-house counsel for BASF, participated in an afternoon-long meeting in Washington, D.C., which resulted in the clarification and narrowing of several key issues relating to the case.

MOTION FOR ENLARGEMENT OF TIME TO FILE PLEADINGS

In support of the relief requested in the parties' joint motion for enlargement of time to file pleadings, the parties state the following:

1. This action involves claims arising under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-75, and the

Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901-92k. BASF seeks to recover from the United States environmental cleanup costs that BASF has allegedly incurred or will incur at its manufacturing facility in Plainville, Massachusetts (the “Facility”).

2. Although this case was originally filed in June 2005, significant legal issues that arose in the wake of the Supreme Court’s decision in Cooper Industries, Inc. v. Aviall Services, Inc., 543 U.S. 157 (2004) (“Aviall”), made settlement efforts difficult and somewhat impractical. Although Aviall clarified the nature of the right to contribution under Section 113(f)(1) of CERCLA — by holding that Section 113(f)(1) contribution claims could not be asserted in the absence of a prior or ongoing action under CERCLA Sections 106 or 107 — the decision had the effect of forcing parties and courts across the country to confront new issues and arguments concerning the rights of potentially responsible parties (“PRPs”) to seek relief under other provisions in CERCLA and RCRA. Indeed, given the state of the law after Aviall, and in an effort to narrow and resolve several legal issues in this case, the United States filed two motions for partial dismissal — one in October 2005 that was denied without prejudice, and another in August 2006, which was granted.

3. In June 2007, when the Supreme Court issued its decision in United States v. Atlantic Research Corp., 127 S. Ct. 2331 (2007), some of those threshold legal issues were clarified in a manner that made settlement efforts in the instant case more likely to bear fruit. Thus, on July 5, 2007, shortly after the decision in Atlantic Research, the parties filed a joint motion to stay the case for 120 days, in order to attempt to negotiate a settlement without the complication or burden of litigation deadlines.

4. On July 10, 2007, the Court issued an order granting a stay until October 12,

2007, and further ordering that BASF's amended answer (if any) be filed by October 12, 2007, and the United States' responsive pleading be filed by October 26, 2007.

5. As discussed above, the parties have made extensive settlement efforts since July of this year, and significant progress has been made. The settlement conference scheduled for October 18, 2007, at BASF's headquarters, is itself the product of a great deal of effort by both sides in this case.

6. The parties seek an additional enlargement of time to file their pleadings so that they can devote all of their time and attention to settlement matters in the coming weeks, free of the obligation to prepare and obtain approval to file their pleadings, amended pleadings, counterclaims, Rule 12 motions, and the like. The parties request 30 additional days to try to reach a settlement, which the parties believe is a sufficient and reasonable amount of time for the parties to make a good faith effort to reach a settlement.

7. Under the motion, the deadlines for filing pleadings would be revised as follows:

| <u>Party/Pleading</u> | <u>Current Due Date</u> | <u>Revised Due Date</u> |
|---|-------------------------|-------------------------|
| BASF's Amended Complaint (if any) | October 12, 2007 | November 12, 2007 |
| United States' Answer or other response | October 26, 2007 | November 26, 2007 |

8. If an agreement-in-principle to settle is not achieved before the revised filing deadlines requested herein, then within ten (10) days following the filing of the United States' Answer or other response to the complaint, the parties shall file jointly to the extent possible (or separately to the extent they cannot agree) a proposed case management schedule, which shall set forth the deadlines for the remaining proceedings in this case, including, for example, the deadlines for fact and expert witness discovery, motions for summary judgment, pre-trial

conference, and trial-ready dates.

For the foregoing reasons, the Court should approve this motion and grant an enlargement of time to file pleadings, as set forth above.

SO ORDERED, this _____ day of October 2007.

The Honorable Joseph L. Tauro
UNITED STATES DISTRICT JUDGE

* * *

Respectfully submitted,

FOR THE UNITED STATES:

RONALD J. TENPAS
Acting Assistant Attorney General
Environment & Natural Resources Division

Dated: October 12, 2007

/s/ Stephen E. Crowley
STEPHEN E. CROWLEY
United States Department of Justice
Environmental Defense Section
P.O. Box 23986
Washington, D.C. 20026-3986
Tel: (202) 514-0165
Stephen.Crowley@usdoj.gov

MICHAEL J. SULLIVAN
United States Attorney
District of Massachusetts

ANTON P. GIEDT
Assistant U.S. Attorney
1 Courthouse Way
Boston, MA 02210
Tel: (617) 748-3309
Fax: (617) 748-3967
anton.giedt@usdoj.gov

Attorneys for the United States

FOR PLAINTIFF BASF CATALYSTS LLC:

Dated: October 12, 2007

/s/ Paul R. Mastrocola
Paul R. Mastrocola
David P. Rosenblatt
Burns & Levinson
125 Summer Street
Boston, MA 02110
pmastrocola@burnslev.com
drosenblatt@burnslev.com

Ronald L. Kuis, Esq.
12 Scenery Road
Pittsburgh, PA 15221
rlkuis@aol.com
(412) 731-7246

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of October, 2007, a true and accurate copy of the foregoing “Joint Status Report And Motion For Enlargement Of Time To File Pleadings” was filed electronically with the Court’s CM/ECF system, which automatically notifies the below counsel of record of the filing, via e-mail, as follows:

Ronald L. Kuis, Esq.
rlkuis@aol.com

Paul R. Mastrocola
David P. Rosenblatt
pmastrocola@burnslev.com
drosenblatt@burnslev.com

/s/ Stephen E. Crowley
Attorney for the Defendants